



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/764,338  
Applicant : William Richard DYER  
Filed : January 19, 2001  
TC/A.U. : 3623  
Examiner : Scott L. Jarrett

Docket No. : 914-1464  
Customer No. : 6449  
Confirmation No. : 7156

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**Mail Stop AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Commissioner:

Applicant requests review of the final rejection (Office Action of May 24, 2005) in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the following reasons.

Claims 1, 3-5, 11, 13-14, and 16 stand rejected under §103 as being unpatentable over Pitkow in view of Dyer '734. (See May 24 Office Action, p 13, para. 15).

As set forth in more detail in the Amendments dated August 22, 2005 filed in response to the May 24 Office Action ("August 22 Amendment") and February 8, 2005 filed in response to the Office Action of October 8, 2004 ("February 8 Amendment"), applicant respectfully submits that the rejections are improper because (1) the cited references fail to teach or suggest all of the elements of the rejected claim and (2) the Examiner has failed to show proper motivation for modifying and/or combining these cited references.

The relevant teachings of Dyer '374 are summarized at pages 6-7 of the August 22 Amendment. The relevant teachings of Pitkow are summarized at page 7 of the August 22 Amendment, as well as at pages 14-15 of the February 8 Amendment.

With respect to independent claim 1 (as last amended in the Amendment filed September 16, 2005), Pitkow and Dyer '734 do not teach or suggest "presenting one or more

consumer products to the user over a computer network,” “presenting a questionnaire to the user over the computer network if the user selects at least one of the consumer products presented,” or “using a computer to perform online sustainability testing by comparing the user’s first response to the user’s subsequent response(s).” (See August 22 Amendment, pp 6-8; February 8 Amendment, pp 14-15).

Furthermore, the Examiner has failed to show proper motivation for combining the teachings of Pitkow and Dyer to derive the subject matter of the rejected claims. (See August 22 Amendment, pp 8-9).

With respect to dependent claim 3, Pitkow and Dyer fail to teach or suggest “presenting a first consumer product and a second consumer product [and asking questions] about the first and second consumer products.” And with respect to claim 4, the cited art does not teach or suggest “presenting a questionnaire to the user only [] if the user selects both the first and second products.” (See August 22 Amendment at pp 6-8).

In fact, with respect to claims 3 and 4, the Examiner acknowledges that Pitkow does not expressly teach that the survey is adapted based upon the presentation of first and second consumer products. (See May 24 Office Action, p 16). The Examiner’s reasoning as to why the subject matter of claims 3 and 4 is nevertheless believed to be obvious is set forth at pages 16-17 of the May 24 Office Action and quoted at page 9 of the August 22 Amendment. Applicant notes that in the Examiner’s comments, he fails to explain any motivation for incorporating the specific limitations of claims 3 and 4 (namely, “presenting a first consumer product and a second consumer product” and “presenting a questionnaire to the user only [] if the user selects both the first and second products”). The Examiner’s rationale does not even mention the specific limitations of claims 3 and 4.

Claims 5, 11, 13-14, and 16 are believed to be allowable as being dependent from allowable independent claim 1.

Claims 2, 12, 15, and 17 stand rejected under 35 U.S.C. §103 as being unpatentable over Pitkow in view of Dyer ‘734 and further in view of Official Notice. (See May 24 Office Action, p 19, para. 16). Claims 2, 12, 15 and 17 are believed to be allowable as being dependent from independent claim 1. In addition, the cited combination of references fail to teach or suggest all of the limitations of claim 12, and further, the Examiner has failed to cite

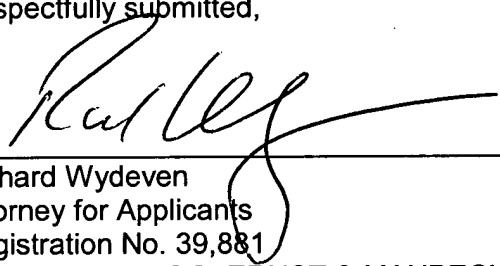
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proper motivation for combining the teachings of the cited references to derive the subject matter of claim 12. (See August 22 Amendment, p 10).

Claims 6-10 stand rejected under §103 as being unpatentable over Pitkow in view of Dyer '734 and further in view of Pinsley '145. (See May 24 Office Action, p 24, para.17). Claims 6-10 depend from independent claim 1 and are therefore believed to be allowable for the reason set forth with respect to claim 1. (See August 22 Amendment, pp 10-11).

Respectfully submitted,

By



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Richard Wydeven  
Attorney for Applicants  
Registration No. 39,881  
ROTHWELL, FIGG, ERNST & MANBECK, p.c.  
Suite 800, 1425 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202)783-6040

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